

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337

**EATEL REPLY TO OPPOSITION TO EATEL APPLICATION FOR REVIEW**

East Ascension Telephone Company, LLC (“EATEL”) hereby replies to the opposition filed to its Application for Review of Action Taken Pursuant to Delegated Authority (“Application for Review”) in the above referenced dockets on May 25, 2012. Only one opposition to the EATEL Application was filed. On June 1, 2012, CTIA—The Wireless Association (“CTIA”) filed an opposition to EATEL’s Application for Review, as well as opposition to applications for review filed by Accipiter Communications Inc., Central Texas Telephone Cooperative, Inc., and National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, and Western Telecommunications Alliance.<sup>1</sup>

CTIA has plainly missed the mark in its Opposition to the EATEL Application for Review of the Bureau’s Benchmarking Order.<sup>2</sup> CTIA mischaracterizes the issues raised by EATEL, summarizing the Application for Review as being “based on a fundamentally flawed

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<sup>1</sup> *Connect America Fund, High-Cost Universal Service Support, Opposition of CTIA—The Wireless Association To Applications For Review And Request For Stay, WC Docket Nos. 10-90 and 05-337 (filed June 1, 2012) (“CTIA Opposition”).*

<sup>2</sup> *Connect America Fund, High-Cost Universal Service Support, WC Docket Nos. 10-90 and 05-337, Order, DA 12-646 (rel. April 25, 2012) (“Benchmarking Order”).*

premise – that rate-of-return (“ROR”) incumbent local exchange carriers (“ILECs”) are entitled to the full measure of support necessary to allow them to recover all of their expenditures, irrespective of the prudence of those expenditures or the impact on the overall USF.”<sup>3</sup> EATEL has neither argued this nor implied it in its Application for Review.

CTIA uses its Opposition as a forum to rail against the Universal Service Support system under which ROR carriers operate.<sup>4</sup> Importantly though, CTIA has not disputed EATEL’s assertions that the Bureau’s Benchmarking Order contains several reversible errors, nor has CTIA provided any evidence to the contrary. Specifically, CTIA has not countered EATEL’s observation that, in adopting a methodology for establishing benchmarks for high-cost loop support (“HCLS”), the “Bureau has employed techniques that are unreliable by any objective measure.”<sup>5</sup> Similarly, CTIA has not disputed that the Bureau has erred in its development of independent variables for use in its quantile regression analysis (“QRA”) or in applying its adopted methodology to EATEL, or both.<sup>6</sup> It is not enough for CTIA simply to state, without support, that the Bureau has reasonably implemented the “Commission’s directive to use regression analysis to limit support for excessive capital and operating costs” or that the Bureau was “well within the Commission’s authority to exercise its expert judgment in a complex, technical area in the context of a transitional mechanism.”<sup>7</sup> CTIA has failed to offer any

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<sup>3</sup> CTIA Opposition at 4-5.

<sup>4</sup> CTIA claims “there is no statutory basis for the RoR ILECs’ position that they must be allowed to continue earning guaranteed returns that ultimately are funded by other carriers’ customers.” CTIA Opposition at 5.

<sup>5</sup> EATEL Application for Review at 2.

<sup>6</sup> EATEL Application for Review at 2.

<sup>7</sup> CTIA Opposition at 6.

response whatsoever to the specific and/or potential errors in the Benchmarking Order identified by EATEL.

Contrary to the intimations of CTIA,<sup>8</sup> EATEL has not challenged the need for the type of reforms adopted in the USF/ICC Transformation Order;<sup>9</sup> rather, EATEL has provided sufficient indications and evidence that the results of the Bureau's QRA are inaccurate, and that any changes in HCLS should be based on statistically reliable techniques, reliable and verifiable independent variables, and properly defined dependent variables. The mere fact that the QRA resulted in a significantly disproportionate allocation of the HCLS reduction -- "it defies logic that one small carrier serving only portions of two Louisiana parishes with a total population of less than 240,000 residences would bear a near 20% brunt of the reduced USF"<sup>10</sup> -- should have been a signal to the Bureau that there were problems with the QRA. An untested and flawed statistical analysis should not be relied upon as probative for any carrier, including EATEL, that the carrier's costs are outside the norm. It is only responsible that the FCC should further test the reliability of such a mechanism in light of the potential profoundly negative impact on consumers and communities. Such a review is prudent, particularly when, in this case, the analysis leads to the surprising and unlikely conclusion that one small carrier should incur nearly one-fifth of all the HCLS reductions. While CTIA makes lofty statements that universal service

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<sup>8</sup> See CTIA Opposition at 3.

<sup>9</sup> *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and LinkUp; Universal Service Reform—Mobility Fund*; WC Docket Nos. 10-90, 07-135, 03-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) ("US/ICC Transformation Order"); *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10<sup>th</sup> Cir. Filed Dec. 8, 2011).

<sup>10</sup> EATEL Application for Review at 10.

and inter-carrier compensation cannot be reformed without shared sacrifices,<sup>11</sup> the HCLS reductions imposed on EATEL appear to be untested, illogical, and unjustified implementations of a suspect mechanism, amounting to an arbitrary penalty, not a “shared sacrifice.”

In short, CTIA has failed to raise any substantive opposition to EATEL’s Application for Review or any meaningful defense of the Benchmarking Order.

Even without having access to the underlying data and methods used by the Bureau, EATEL has been able to show there is reversible error in the Benchmarking Order. Such errors support EATEL’s request that the effective date of the Benchmarking Order should be stayed until the Commission can more carefully evaluate the QRA and take action to ensure that a valid statistical model is used for any HCLS reductions.

Significantly, since EATEL filed its Application for Review, it has already uncovered one more apparent error in the Bureau’s analysis. Specifically, EATEL has found an error in the Bureau’s CapEx formula as the QRA apparently reveals that capital costs in Alaska are 46% less than those in the Lower 48 states, which is in direct conflict with both intuition and with a ten-year study by the U.S. Army Corp of Engineers that shows capital projects in Alaska cost 19% more than the average of those in the Lower 48 states. This mistake in a critical formula is an error that not only illustrates flawed input data but also taints the entire computation against which other companies are evaluated. In short, it casts further doubt on the entire QRA methodology adopted by the Bureau. EATEL expects that, once given access to the underlying data and methods used by the Bureau in the formulation of its QRA,<sup>12</sup> EATEL will find further

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<sup>11</sup> See CTIA Opposition at 3.

<sup>12</sup> It is unreasonable that EATEL still does not have access to the underlying data and methods upon which the Bureau relied in developing its QRA, even after repeated requests.

basis to challenge the validity of the QRA results, as conclusive evidence that the HCLS reductions set for EATEL as unjustifiable.

For the foregoing reasons, EATEL continues to urge the Commission to find there is good cause to grant its Application for Review, stay the effective date of the Bureau's Benchmarking Order until such review can be completed, and ultimately reverse the Benchmarking Order so the Bureau may adopt a more transparent and reliable methodology for calculating HCLS.

Respectfully submitted,

/s/

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